



## **POLICY No. 26**

### **RAPID RESPONSE AND ADDITIONAL ASSISTANCE**

#### **PURPOSE**

To provide guidance to the Mendocino County Workforce Investment Board (WIB), its One-Stop Operator and subrecipients regarding State of California and federal regulations that govern grants funded with the Workforce Investment Act (WIA) Dislocated Worker 25 Percent funds.

#### **BACKGROUND**

By law, the Governor is allowed to reserve up to 25 percent of the WIA dislocated worker funds allocated to California for Rapid Response and Additional Assistance activities necessary to plan and deliver services to enable dislocated workers to transition to new employment as quickly as possible, following either a permanent closure or mass layoff, or a natural or other disaster resulting in a mass job dislocation

#### **REFERENCES**

- Employment Development Department (EDD) Workforce Investment Act Eligibility Technical Assistance Guide (TAG), Section V (July 2003)
- EDD WIA Directive WIAD02-13, Subject: Dislocated Worker 25 Percent Fund Requirements, April 24, 2003
- Title 20 of the Code of Federal Regulations (Title 20 CFR), Parts 665 and 666
- WIA Sections 101(9), (10) and (38), 133(a)(2), 134(a)(2)(A), 134(e)(3)(A), and 181(d)

## DEFINITIONS

**Stopgap employment** means work an individual does only because he has lost the customary work for which his training, experience or work history qualifies him (see “underemployed”). Employment would be considered “stopgap” if the salary were substantially below the salary of the individual’s primary occupation and/or if he is working substantially under the skill level of his customary occupation. There may be times when stopgap employment provides a self-sufficient wage, e.g., contract employment or employment obtained through a temporary employment services agency. Such employment would not change the individual’s dislocated worker status. The determination about whether or not an individual’s employment since dislocation is stopgap employment must be made on a case-by-case basis and take into consideration an individual’s personal, family, financial, and employment situation. (Individuals engaged in stopgap employment are reported as not employed.) (TAG, July 2003.)

**Layoff** means the permanent or temporary termination of employment of an employee because a position has been abolished, because of insufficient funds, because of lack of work, or for any other reason not reflecting discredit on the employee (such as dismissal for inadequate performance, violation of workplace rules, cause, etc.). (TAG, July 2003.)

**Furlough** means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non disciplinary reasons [Title 5 United States Code (USC) 7511 (a)(5)]. As such, it is a temporary termination of employment or layoff. (TAG, July 2003.)

**Lockout** means any refusal by an employer to permit any group of five or more employees to work as a result of a dispute with such employees affecting wages, hours, or other terms or conditions of employment of such employees [Section 1132.8 of the California Labor Code]. (TAG, July 2003.)

**Employed** means an individual currently working as a paid employee or who works in his or her own business, profession or farm, worked 15 hours or more as an unpaid worker in an enterprise operated by a member of the family, or is one who was not working, but has a job or business from which he/she was temporarily absent because of illness, bad weather, vacation, labor-management dispute, or personal reasons, whether or not paid by the employer for time off, and whether or not seeking another job. (TAG, July 2003.)

**Not employed** means an individual who does not meet the definition of employed or who, although employed, has received notice of termination of employment, or has been engaged in stopgap employment since dislocation. (TAG, July 2003.)

**Underemployed** means an individual who is working part-time but desires full-time employment, or who is working in employment not commensurate with the individual's demonstrated level of educational attainment. (TAG, July 2003.)

**Sufficient attachment to the workforce** means the [individual] has been employed for three consecutive months during the past twelve months. (Definition adopted by the WIB on June 12, 2002.)

**Unlikely to return** means the [individual] has worked in a declining industry/occupation; or has worked in an industry/occupation having limited job orders in the EDD Job Match System; or is insufficiently educated and/or does not have the necessary skills for reentry into their former industry/occupation; or has a physical or other problem(s), which would preclude reentry into a former industry/occupation as documented by a physician, psychiatrist, psychiatric social worker or chiropractor; and has been identified as a Dislocated Worker through the UI Profiling System. (Definition adopted by the WIB on June 12, 2002.)

**Substantial layoff** means the layoff of 1-499 employees who comprise at least 10 percent of the workforce, excluding temporary or intermittent employees and including part-time employees at 20 hours per week or more; or the layoff of 50 or more employees for a single employer. (Definition adopted by the WIB on June 12, 2002.)

**General announcement** means a media article or public notice documenting an employer's intent to close. (Definition adopted by the WIB on June 12, 2002.)

**General economic conditions** means a business loss due to the closure of substantial layoff of a primary supplier or primary customer affecting the self-employed applicant's products or services; or a business loss because the product/occupation has little demand within the community or has been declining; or a business loss because of increased non-labor production costs which are out of the control of management (e.g., energy costs); or a business loss because of natural disasters as defined in the Federal Disaster Unemployment Assistance (DUA) program or by State declaration; or conditions that have a direct adverse affect on a self-employed individual(s) and are beyond their control. Examples include, but are not limited to, seasonal factors, unforeseen or unusual operating costs, depressed market conditions, and other market/industry changes. (Definition adopted by the WIB on June 12, 2002.)

**Difficulty in obtaining or upgrading employment** means an underemployed individual in a job limited to one or more part-time jobs; or short-term (four months or less) jobs within the year prior to application which were for the purposes of income maintenance rather than part of a career ladder; or an individual who received earnings that equaled no more than minimum wage during the past 12 months; or a person that did not work full time (30 or more hours per week) in unsubsidized employment for more than 13 consecutive weeks; or a person who is working part time (less than 30 hours per week) but desires full time employment; or an individual working in a setting not

commensurate with their demonstrated level of education and or skill achievement. (Definition adopted by the WIB on June 12, 2002.)

## **POLICY AND PROCEDURES**

### **A. General Provisions**

1. Two types of grants are allowable under the Dislocated Worker 25 Percent portion of WIA: “Rapid Response” and “Additional Assistance.” Each of these grant types have the unique characteristics described below:
  - a) Rapid Response activities—planning and delivering immediate services to assist employers and groups affected by mass layoffs, permanent business closures, or natural or other disasters. Typically, these activities involve the provision of information with limited individual intervention. Under these grants, participants are not enrolled in the WIA program.
  - b) Additional Assistance to local areas that have insufficient resources to address disasters, mass layoffs or plant closings or other events that precipitate substantial increase in the number of unemployed individuals. The services are provided to individuals. Participants are enrolled in the WIA program.
2. The WIA permits funds to be used for intensive and training services for workers:
  - a) As soon as they have layoff notices; or
  - b) 180 days before layoff if employed at a facility that has made a general announcement that it will close within 180 days.

### **B. Rapid Response**

1. Required activities include:
  - a) Immediate and on-site contact with the layoff employer, representatives of the affected workers, and the local community.
  - b) The provision of information and access to unemployment compensation benefits, comprehensive One-Stop Career Center system services, and employment and training activities, including information on the Trade Adjustment Assistance (TAA) program and the North American Free Trade Act (NAFTA)-TAA program.
  - c) The provision of guidance and/or financial assistance in establishing a labor-management committee voluntarily agreed to by labor and management, or a

- workforce transition committee comprised of representatives of the employer, the affected workers and the local community.
- d) The provision of emergency assistance adapted to the particular closing, layoff, or disaster.
  - e) The provision of assistance to the local board and CEO(s) to develop a coordinated response to the dislocation event and, as needed, to develop an application for a National Emergency Grant.
2. Allowable activities that may be performed with prior approval of the EDD include:
- a) In conjunction with other appropriate federal, state and local agencies and officials, employer associations, technical councils or other industry business councils, and labor organizations:
    - i) Develop prospective strategies for addressing dislocation events, that ensure rapid access to the broad range of allowable assistance;
    - ii) Identify strategies for the aversion of layoffs; and
    - iii) Develop and maintain mechanisms for the regular exchange of information relating to potential dislocations, available adjustment assistance, and the effectiveness of Rapid Response strategies.
  - b) In collaboration with the appropriate state agency(cies), collect and analyze information related to economic dislocations, including potential closings and layoffs, and all available resources in the state for dislocated workers in order to provide an adequate basis for effective program management, review and evaluation of Rapid Response and layoff aversion efforts in the state.
  - c) Participate in capacity building activities, including providing information about innovative and successful strategies for serving dislocated workers, with local areas serving smaller layoffs.
  - d) Assist in devising and overseeing strategies for:
    - i) Layoff aversion, such as pre-feasibility studies of avoiding a plant closure through an option for a company or group, including the workers, to purchase the plant or company and continue it in operation;
    - ii) Incumbent worker training, including employer loan programs for employee skill upgrading; and

iii) Linkages with economic development activities at the federal, state and local levels, including federal Department of Commerce programs.

### 3. Prohibited Activities

Funds designated for Rapid Response may not be used for the following activities:

- a) Encouraging or inducing business relocation
- b) Employment generating activities
- c) Economic development activities
- d) Investment in revolving loan funds
- e) Capitalization of businesses
- f) Investment in contract bidding resource centers
- g) Foreign travel
- h) Employer outreach and job development activities
- i) Other individualized direct services to affected workers

### C. Additional Assistance

Funds for Additional Assistance Grants, when available, are intended for provision of WIA allowable direct services to participants.

#### 1. Client Eligibility Under 25 Percent Additional Assistance Grants

- a) General – Program operators must verify the following for all individuals served under the WIA program:
  - i) Right to work in the United States
  - ii) Selective Service registration compliance as it applies to male applicants
  - iii) Age – 18 years of age and older
- b) Dislocated Worker

There are six methods for determining that an eligible adult is a dislocated worker.

- i) The first method has been formatted for clarity. It has three conditions that must be met: (a), (b) and (c). For (b), there are two options for meeting the condition: (1) or (2).

The individual:

- (a) Has been terminated or laid off, or has received a notice of termination or layoff, from employment; and
- (b) (1) Is eligible for or has exhausted entitlement to unemployment compensation; or
  - (2) Has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a state unemployment compensation law; and
- (c) Is unlikely to return to a previous industry or occupation; or
- ii) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise; or
- iii) Is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or, for purposes of eligibility to receive services other than training, intensive, or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close; or
- iv) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters; or
- v) Is a displaced homemaker and has been dependent on the income of another family member, but is no longer supported by that income and is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment; or
- vi) Has voluntarily terminated employment and is receiving or has been determined eligible to receive unemployment insurance compensation or has subsequently exhausted entitlement to unemployment insurance compensation since terminating employment voluntarily, and is unlikely to return to a previous industry or occupation.

## 2. Eligible Employed Worker

An eligible dislocated worker remains eligible for assistance after dislocation as long as the individual has not been employed in a job since dislocation and prior to application that paid a wage defined by the local board as a self-sufficient dislocated worker wage or leading to self-sufficiency or providing more than stopgap employment.

## 3. Farmworkers

a) According to the EDD WIA Eligibility Technical Assistance Guide (July 2003), individuals that may have worked seasonally can be considered unlikely to return to work in a previous industry or occupation for a variety of reasons such as:

- i) Change in family situation that requires higher income;
- ii) Disability that precludes returning to the same occupation;
- iii) Natural disaster that results in lost wages;
- iv) Loss of agricultural land;
- v) Mechanization; or
- vi) Any significant variance to normal season employment patterns, resulting in uncertain return-to-work dates.

b) Additionally, permanent closures or a substantial layoff from agricultural enterprises and facilities such as packaging, canneries, or farming are not excluded from the standard under WIA Section 101(9)(B). The WIA Section 101(9)(C) standard regarding those that were self-employed due to economic conditions that resulted from extreme or unusual weather patterns and agricultural market downturns can also apply to farmworkers.

## 4. Dislocated Worker Status

Once an individual is registered as a dislocated worker, the individual remains a dislocated worker until exited from the program regardless of employment status or earnings. If a participant becomes employed in a full-time, permanent job that pays a wage defined by the local board as self-sufficient or leading to self-sufficiency, the participant may continue to be served in the program until he/she is formally exited from the program.

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